

AN ACT

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RELATING TO TAXATION; SETTING JANUARY 1, 2005 AS THE INITIATION DATE OF  
THE NEXT SERIES OF NONTAXABLE TRANSACTION CERTIFICATES; AMENDING  
SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section  
13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER  
EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--  
RENEWAL.--

A. All nontaxable transaction certificates of the appropriate series  
executed by buyers or lessees should be in the possession of the seller or lessor for  
nontaxable transactions at the time the return is due for receipts from the transactions.  
If the seller or lessor is not in possession of the required nontaxable transaction  
certificates within sixty days from the date that the notice requiring possession of these  
nontaxable transaction certificates is given the seller or lessor by the department,  
deductions claimed by the seller or lessor that require delivery of these nontaxable  
transaction certificates shall be disallowed. The nontaxable transaction certificates  
shall contain the information and be in a form prescribed by the department. The  
department by regulation may deem to be nontaxable transaction certificates  
documents issued by other states or the multistate tax commission to taxpayers not  
required to be registered in New Mexico. Only buyers or lessees who have a  
registration number or have applied for a registration number and have not been

refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute  
nontaxable transaction certificates issued by the department. If the seller or lessor has  
been given an identification number for tax purposes by the department, the seller or  
lessor shall disclose that identification number to the buyer or lessee prior to or upon  
acceptance of a nontaxable transaction certificate. When the seller or lessor accepts  
a nontaxable transaction certificate within the required time and in good faith that the  
buyer or lessee will employ the property or service transferred in a nontaxable manner,  
the properly executed nontaxable transaction certificate shall be conclusive evidence,  
and the only material evidence, that the proceeds from the transaction are deductible  
from the seller's or lessor's gross receipts.

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B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the

department under this section shall not be given prior to the commencement of an  
audit of the seller required to be in possession of the documents.

D. On January 1, 2005, every nontaxable transaction certificate, except  
for nontaxable transaction certificates of the series applicable to the twelve-year period  
beginning January 1, 2005 and issued by the department prior to that date, is void with  
respect to transactions after December 31, 2004. The department shall issue  
separate series of nontaxable transaction certificates for the twelve-year period  
beginning January 1, 2005 and for each twelve-year period beginning on January 1 of  
every twelfth year succeeding calendar year 2005. A series of nontaxable transaction  
certificates issued by the department for any twelve-year period may be executed by  
buyers or lessees for transactions occurring within or prior to that twelve-year period  
but is not valid for transactions occurring after that twelve-year period, except the  
nontaxable transaction certificates issued by the department for the period January 1,  
1992 to December 31, 2001 may be executed by buyers or lessees for transactions  
occurring prior to December 31, 2004. For administrative convenience, the  
department may accept and approve qualifying applications for the privilege of  
executing nontaxable transaction certificates and pre-issue certificates of any series  
within the six-month period immediately preceding the beginning of the twelve-year  
period to which the series of nontaxable transaction certificates applies.

E. To exercise the privilege of executing appropriate nontaxable  
transaction certificates, a buyer or lessee shall apply to the department for permission  
to execute nontaxable transaction certificates, except with respect to documents issued  
by other states or the multistate tax commission that the department has deemed to be

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nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to approve the application of the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer or to have a non-filed period, the department may refuse to issue nontaxable transaction certificates to the person until the person has filed returns for all non-filed periods and is no longer shown to be a delinquent taxpayer. The taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require a buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require a seller or lessor engaged in business in New Mexico to report to the department the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates."

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Section 2. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

- (1) receipts from selling metalliferous mineral ore;
- (2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;
- (3) receipts from selling construction material; or
- (4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or any governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section."

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